

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

ROGER LEE MCKOY,
Plaintiff-Appellant,

v.

No. 95-2610

DANIEL B. BURKE, President,
Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of North Carolina, at Raleigh.
W. Earl Britt, District Judge.
(CA-95-343-5-BR)

Submitted: November 28, 1995

Decided: August 5, 1996

Before MURNAGHAN, WILKINSON, and NIEMEYER,
Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam
opinion.

COUNSEL

Roger Lee McKoy, Appellant Pro Se. Frank Pelouze Ward, Jr., Shan-
non E. Brown, MAUPIN, TAYLOR, ELLIS & ADAMS, P.A.,
Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Roger Lee McKoy filed a notice of appeal in this action against the president of Capital Cities/ABC Inc. for alleged violations of his constitutional "thinking rights."

On June 14, 1995, the district court granted the Defendant's motion to dismiss McKoy's complaint. On July 6, 1995, McKoy filed a document entitled "JUDGMENT IN A CIVIL CASE WITH OUT A[N] INVESTIGATION," which the court construed as a motion for reconsideration. See Fed. R. Civ. P. 60. On August 9, 1995, the court denied the motion. McKoy filed a notice of appeal on August 25, 1995.

In this court, the Appellee (Defendant below) filed a motion to dismiss the appeal for failure to file a timely notice of appeal. We grant in part and deny in part the Appellee's motion to dismiss the appeal. We further affirm the district court's order denying McKoy's motion for reconsideration.

McKoy did not specify in his notice of appeal the district court's order he is appealing. To the extent that he is appealing from the district court's order dismissing his complaint, the notice of appeal is untimely because it was filed more than thirty days after the district court entered its dismissal order. Fed. R. App. P. 4(a)(1). McKoy's motion for reconsideration did not toll the time for filing an appeal because it was not filed within ten days of the court's dismissal order. Fed. R. App. P. 4(a)(4). Finally, McKoy did not move the district court to extend the time for filing a notice of appeal. Fed. R. App. P. 4(a)(5). Therefore, we grant Appellee's motion to dismiss the appeal as to the appeal of the order dismissing McKoy's complaint.

McKoy's notice of appeal is timely as to the district court's order denying his motion for reconsideration because it was filed within

thirty days of that order. Rule 4(a)(1). Therefore, we deny Appellee's motion to dismiss the appeal as to the appeal of the order denying McKoy's motion for reconsideration. However, the district court did not abuse its discretion in denying McKoy's motion for reconsideration. McKoy's complaint claims that all television and radio stations are "violating [his] constitution[al] thinking rights." He further alleges that he has "no privacy because of the television and radio stations." McKoy has not demonstrated that he is compelled to listen to television and radio broadcasts. Furthermore, there is no recognized constitutional right to think freely without outside influences. Therefore, McKoy's claim is meritless.

Accordingly, we grant in part and deny in part Appellee's motion to dismiss the appeal. We further affirm the district court's order denying McKoy's motion for reconsideration of the dismissal order. We grant McKoy leave to proceed in forma pauperis on appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART, DISMISSED IN PART